



LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket Nos. 2018-2, 2018-3]

Group Registration of Newsletters and Serials

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations governing the group registration options for newsletters and serials. With respect to group newsletters, the final rule amends the definition of “newsletter,” eliminating the requirement that each issue must be a work made for hire, and the provision stating that group newsletter claims must be received within three months after publication. Under the final rule, newsletter publishers now should register their issues with the online application and upload a digital copy of each issue through the electronic registration system instead of submitting them in a physical form. With respect to group serials, the final rule clarifies that serials governed by the rule generally must be published at intervals of a week or longer, and that the publication dates provided in the application need not match the dates appearing on the issues themselves. In addition, the rule phases out the paper application for group serials and the submission of physical copies. Beginning one year after the rule goes into effect, serial publishers will be required to use the online application for group serials and to upload a digital copy of each issue, rather than submitting them in a physical form. The final rule updates the regulations for both newsletters and serials by confirming that publishers do not need to provide the Library of Congress with complimentary

subscriptions to or microfilm of each issue as a condition for registering their works with the Office, but newsletter and serial issues that are submitted for purposes of registration will no longer satisfy the mandatory deposit requirement. Publishers will be expected to separately provide the Library with two complimentary subscriptions if the newsletter or serial is published in the United States in a physical format (unless the publisher is informed that the publication is not needed for the Library's collections). If the newsletter or serial is published solely in electronic form, the publisher will remain exempt from mandatory deposit unless the Office issues a formal demand for copies of that publication.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202-707-8040, or by email at rkas@copyright.gov or ebertin@copyright.gov; or Cindy Paige Abramson, Assistant General Counsel, by telephone at 202-707-0676, or by email at ciab@copyright.gov.

SUPPLEMENTARY INFORMATION:

On May 17, 2018, the Copyright Office (the "Office") published two notices of proposed rulemaking ("NPRMs") setting forth proposed amendments to the regulations governing the group registration options for newsletters and serials. 83 FR 22902 (May 17, 2018); 83 FR 22896 (May 17, 2018). The Office did not receive any comments in response to the NPRM on group newsletters. In response to the NPRM on group serials,

the Office received comments from the Copyright Alliance and one individual.¹ Having reviewed and carefully considered these comments, the Office is issuing a final rule that is nearly identical to the rule proposed in the NPRM on group newsletters, and substantially similar to the rule proposed in the NPRM on group serials; in both cases, the Office has made a few modifications reflecting the concerns raised by the comments regarding online registration and electronic submission of deposits regarding group registration of serials, which are discussed in more detail below.²

Topics Involving Solely the Group Registration Option for Newsletters

The final rule revises current practices for the group registration option for newsletters. It clarifies and expands the category of works eligible for this option by amending the definition of what constitutes a “newsletter” and by making clear that newsletters need not be collective works. It also eliminates the work-made-for-hire requirement and the requirement that the issues must be submitted within three months after publication.

The final rule also phases out the paper application (known as Form G/DN) and generally requires applicants to register their newsletters using the designated online application. In addition, it requires applicants to upload their newsletters in a digital format through the electronic registration system. If an applicant submits Form G/DN after the effective date of the final rule, the Office will refuse to register the claim.

¹ The comments can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/group-serials/>.

² The final rule also includes a few technical amendments. The rule has been revised to account for a recent amendment that was made by the final rule on group registration of newspapers. *See* 83 FR 25375 (June 1, 2018). The rule removes cross-references to the prior regulations on newsletters and serials. *See* 37 CFR 202.4(l), 202.6(e)(1). It also corrects an error made by the Federal Register in publishing the regulation on supplementary registration. *See* 82 FR 27424 (June 15, 2017). Specifically, the rule removes the term “SE.” (which is an abbreviation for “southeast”) and replaces it with the term “SE” (which is the correct abbreviation for the term “serials”). *See* 37 CFR 202.6(e)(1).

Likewise, the Office will refuse registration if an applicant submits physical copies of a newsletter, such as printed copies or photocopies, or digital copies that have been saved onto a flash drive, disc, or other physical storage medium.

Topics Involving Solely the Group Registration Options for Serials

The final rule codifies, clarifies, and revises current practices for the group registration option for serials.

First, the final rule requires that each claim must include at least two issues, that each issue must be a work made for hire, and that the author and copyright claimant for each issue must be the same person or organization.

Second, the final rule eliminates the current requirement that each issue must have been created no more than one year prior to publication.

Third, the final rule requires that applicants may only register serials that are “generally . . . published at intervals of a week or longer” (*e.g.*, weekly, every two weeks, monthly), and requires that the issues be “published in a given three month period” within “the same calendar year.” The proposed rule reflected the current practice that issues must be published at intervals of one week or more, however, the Copyright Alliance noted that publishers sometimes distribute two issues during the same week, such as when a “special” issue is published in addition to a regularly scheduled issue.³ To accommodate these practices, the final rule clarifies that a serial must “generally” be published at intervals of one week or more. The Copyright Alliance also explained that issues may be published in one month but contain an issue date for the following month and, in the case of issues published in December, may contain the issue date for January

³ Copyright Alliance Comment at 2–3.

of the following year.⁴ Based on this information, the final rule eliminates the requirements that the issues themselves must bear issue dates reflecting the same three-month period and the same calendar year. Instead, applicants will be required to provide a publication date for each issue in the group.

Fourth, the final rule requires that each issue must be an “all-new” collective work that has not been previously published, and each issue must be fixed and distributed as a discrete, self-contained collective work. The Copyright Alliance expressed concern that this requirement may prevent publishers from registering “enhanced, digital issues which may contain content hosted on and linked to another platform such as videos and blogs that allow the reader to manipulate or interact with the issue.”⁵ The Office does not believe a change to the language of the rule is necessary. If a particular issue contains enhanced content, such as an embedded video, the registration will cover that material if it is included within the deposit and if the examiner can access and view that material in the context where it appears within the actual serial.⁶ Any additional content that appears on the publisher’s website—but does not appear within the issues themselves—must be registered separately.

Fifth, the final rule generally requires applicants to register their issues using the online application designated for group serial claims, and eliminates the paper application known as Form SE/Group.⁷

⁴ Copyright Alliance Comment at 2.

⁵ Copyright Alliance Comment at 2.

⁶ See U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices*, sec. 1508.1 (3d ed. 2017) (noting that the Office “must be able to perceive the entire content of the work, including the context where each element appears within the work as a whole”).

⁷ An individual filed a public comment supporting the requirement for applicants to file electronically and stated that he believed this would promote efficiency, reduce the burden on applicants, and encourage broader participation in the registration system. Kotelnikov Comment at 1. The Copyright Alliance also

Finally, the final rule amends the deposit requirements by requiring applicants to upload their issues in digital form through the electronic registration system, instead of submitting them in a physical form, absent exceptional cases. While the Copyright Alliance agreed that requiring publishers to upload a digital copy of each issue “will generally ‘increase the efficiency of the group registration process,’” it questioned whether the electronic registration system is capable of handling large digital files, whether the process of uploading these files may be burdensome for some publishers, and whether the Office has implemented and deployed robust security measures to protect its digital deposits.⁸ The Copyright Alliance suggested that the Office should gradually phase out the paper application and continue to accept physical deposits “[u]ntil the registration system is able to fully accommodate the digital deposit process.”⁹ After carefully reviewing these comments, the Office has decided to adopt the online digital deposit requirement proposed in the NPRM, but to give publishers time to adjust to this change, the Office will continue to accept physical deposits and paper applications for another twelve months. Generally, if a publisher submits a Form SE/Group or submits a physical deposit after the phase-out period has expired, the Office will refuse to register the claim.

The Office has concluded that the other concerns raised by the Copyright Alliance about digital deposits were already adequately addressed by the proposed rule. The Office has accepted digital deposits from serial publishers since September 14, 2012, and is not aware of any technical issues that have prevented them from using the upload

agreed that eliminating the paper form and requiring publishers to use the online application will “facilitate economy and efficiency.” Copyright Alliance Comment at 3.

⁸ Copyright Alliance Comment at 3.

⁹ Copyright Alliance Comment at 3.

feature. The current registration system will accept any digital deposit, as long as it is submitted in an acceptable file format and does not exceed 500MB. And as noted in the proposed rule, the files may be compressed to comply with this limit, if necessary.

The Office first introduced its electronic registration system more than a decade ago, and as the Copyright Alliance acknowledged, the Office has not experienced any issues concerning the security of its digital deposits.¹⁰ The Office utilizes a multi-level security design to ensure the confidentiality and integrity of the files that are stored within this system. The system is certified to operate at the moderate security level, as defined by the FIPS 200 and SP 800-53 standards published by the National Institute of Standards and Technology.¹¹ The entire system operates on hardware and software that is dedicated to this system and it does not share storage resources with other systems. Strict access controls have been placed throughout the system that enforce the principle of “least privilege,” meaning that each type of user may access only what is needed for that particular role. The system is also protected by multiple levels of network firewalls and other network-based security, such as anti-malware protection, and it is continuously monitored to ensure that these security controls remain effective.

In addition to these technical measures, the Office’s regulations restrict the parties who may obtain access to its digital registration deposits. Briefly stated, the Office will provide a copy of a registration deposit only if it receives (i) written authorization from the copyright claimant or the owner of the exclusive rights in the work, (ii) a written

¹⁰ Copyright Alliance Comment at 3.

¹¹ See NIST, FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION 200, MINIMUM SECURITY REQUIREMENTS FOR FEDERAL INFORMATION AND INFORMATION SYSTEMS, and NIST, SPECIAL PUBLICATION 800-53, RECOMMENDED SECURITY CONTROLS FOR FEDERAL INFORMATION SYSTEMS, available at <https://csrc.nist.gov/publications/>.

request from an attorney representing a plaintiff or defendant in litigation involving that work, or (iii) a court order directing the Office to produce a copy of that work for use in a legal proceeding.¹²

Similarly, regulations restrict how parties may access digital registration deposits that have been transferred to the Library of Congress. Specifically, the Library currently provides access to the digital registration deposits that it receives through the group registration option for newspaper issues, subject to certain conditions specified in the regulations.¹³ But the Library currently does not provide public access to digital registration deposits for any other type of work, including deposits submitted under the group registration option for serial issues. As noted in the NPRM on group newspapers, the Library would like to expand the regulation to include other types of digital registration deposits, but before doing so, the Office will conduct separate rulemakings to provide notice and seek comment from the public.¹⁴

Topics Involving Both the Group Registration Option for Newsletters and the Group Registration Option for Serials

The final rule makes four changes that modify the regulations governing both newsletters and serials.

First, the rule memorializes the Office's longstanding position regarding the scope of a group registration. It confirms that a registration for a group of newsletter or serial issues covers each issue in the group. It also confirms that if each issue is a collective work, the registration will cover the articles, photographs, illustrations, or other

¹² See 37 CFR 201.2(d)(2).

¹³ See 37 CFR 202.18 (limiting access to electronic works to "two Library of Congress authorized users via a secure server over a secure network that serves Library of Congress premises").

¹⁴ See 82 FR at 51377.

contributions appearing within those issues if they are fully owned by the copyright claimant and if they were first published in those issues.

Second, the rule confirms that newsletter and serial publishers will no longer be required to provide the Library of Congress with complimentary subscriptions to or microfilm copies of their issues as a condition for seeking a group registration under section 408(c)(1) of the Copyright Act. The Copyright Alliance applauded the elimination of this requirement.¹⁵ But newsletter and serial issues that are submitted to the Office for purposes of registration will no longer satisfy the mandatory deposit requirement set forth in section 407 of the Copyright Act.¹⁶

Third, the rule provides guidance on how newsletter and serial publishers may comply with the mandatory deposit requirement. If a newsletter or serial is published in the United States in a physical format, the publisher will be expected to provide the Library with two complimentary subscriptions to physical copies of that publication, unless the publisher is notified that the newsletter or serial is not needed for the Library's collections. The rule does not change for newsletters or serials published solely in electronic format; in that case, the publisher will not be expected to provide copies of that publication unless the Office issues a formal demand for that newsletter or serial under section 202.24 of the regulations.

Fourth, the final rule includes provisions to address the Copyright Alliance's concerns about the potential burdens of electronic filing and digital deposit on applicants

¹⁵ Copyright Alliance Comment at 1.

¹⁶ The final rule does not apply to newspapers; deposits submitted in compliance with group registration of newspapers also satisfy the mandatory deposit requirement. 37 CFR 202.19(d)(2)(x).

transitioning from traditional print to digital media.¹⁷ These provisions permit the Office to waive the online filing requirement in “an exceptional case” and “subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.” Registrants who do not have internet access or are unable to use the online applications may contact the Office, and the Office will review the specific details of their cases and determine their eligibility. The rule also provides that applicants may request special relief under § 202.20(d) if they are unable to comply with the deposit requirements for these group options. These provisions are consistent with recently amended rules for group registration of contributions to periodicals and of photographs (published and unpublished) and for supplemental registration.¹⁸

The Office plans to offer several resources for newsletter and serial publishers that should ease the transition to these new requirements, including an updated version of the *Compendium of U.S. Copyright Office Practices, Third Edition* and updated Circulars that discuss these group registration options and the mandatory deposit requirements for these types of works. The Office will also update the onscreen instructions and help text that accompanies the online applications for each type of claim, and add warnings to the corresponding paper applications to notify applicants that Forms G/DN and SE/Group will soon be phased out.

List of Subjects

37 CFR Part 201

¹⁷ Copyright Alliance Comment at 3.

¹⁸ 37 CFR 202.4(g)(9), (h)(11), (i)(11), 202.6(e)(7); *see also* 82 FR 47415, 47419 (Oct. 12, 2017) (proposing same for group registration of unpublished works).

Copyright.

37 CFR Part 202

Copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.1 by revising paragraph (c)(6) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(6) *Mandatory Deposit Copies.* Mandatory deposit copies of published works submitted for the Library of Congress under 17 U.S.C. 407 and § 202.19 of this chapter (including complimentary subscriptions to serial publications), and newspaper microfilm copies submitted under § 202.4(e) of this chapter, should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE., Washington, DC 20559-6600.

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3. Amend § 201.3 by revising paragraph (c)(6) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

Registration, recordation and related services	Fees (\$)
* * * * *	
(6) Registration of a claim in a group of serials (per issue, minimum two issues)	25
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* * * * *	

PART 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 [Amended]

5. Amend § 202.3 by removing and reserving paragraphs (b)(6) and (9).

6. Amend § 202.4 as follows:

- a. Add paragraphs (d) and (f).
- b. In paragraph (l) remove “through (7), or (9)”.
- c. Revise the first sentence of paragraph (n).

The additions and revision read as follows:

§ 202.4 Group registration.

* * * * *

(d) *Group registration of serials.* Pursuant to the authority granted by 17 U.S.C.

408(c)(1), the Register of Copyrights has determined that a group of serial issues may be registered with one application, the required deposit, and the filing fee required by

§ 201.3(c) of this chapter, if the following conditions are met:

- (1) *Eligible works.* (i) All the issues in the group must be serials.
- (ii) The group must include at least two issues.
- (iii) Each issue in the group must be an all-new collective work that has not been previously published, each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.
- (iv) Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.
- (v) The serial generally must be published at intervals of a week or longer. All of the issues must be published within three months, under the same continuing title, within the same calendar year, and the applicant must specify the date of publication for each issue in the group.
- (2) *Application.* The applicant may complete and submit the online application designated for a group of serial issues. Alternatively, the applicant may complete and submit a paper application using Form SE/Group, provided that the application is received on or before [INSERT DATE 395 DAYS FROM PUBLICATION IN THE **FEDERAL REGISTER**]. The application may be submitted by any of the parties listed in § 202.3(c)(1).
- (3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. Copies submitted under this paragraph will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory deposit requirement under 17 U.S.C. 407.

(i) The issues may be submitted in digital form if the following requirements have been met. Each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(ii) Alternatively, the applicant may submit a physical copy of each issue, provided that the deposit is received on or before [INSERT DATE 395 DAYS FROM PUBLICATION IN THE **FEDERAL REGISTER**]. If the claim is submitted with an online application, the copies must be accompanied by the required shipping slip generated by the electronic registration system, the shipping slip must be attached to one of the copies, the copies and the shipping slip must be included in the same package, and the package must be sent to the address specified on the shipping slip.

(4) *Exceptional cases.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (d)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

* * * * *

(f) *Group registration of newsletters.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newsletter issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All the issues in the group must be newsletters. For purposes of this section, a newsletter is a serial that is published and distributed by mail, electronic media, or other medium, including paper, email, or download. Publication must usually occur at least two days each week and the newsletter must contain news or information that is chiefly of interest to a special group, such as trade and professional associations, colleges, schools, or churches. Newsletters are typically distributed through subscriptions, but are not distributed through newsstands or other retail outlets.

(ii) The group must include at least two issues.

(iii) Each issue in the group must be an all-new issue or an all-new collective work that has not been previously published, and each issue must be fixed and distributed as a discrete, self-contained work.

(iv) The author and claimant for each issue must be the same person or organization.

(v) All the issues in the group must be published under the same continuing title, they must be published within the same calendar month and bear issue dates within that month, and the applicant must identify the earliest and latest date that the issues were published during that month.

(2) *Application.* The applicant must complete and submit the online application designated for a group of newsletter issues. The application may be submitted by any of

the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement. Copies submitted under this paragraph will be considered solely for the purpose of registration under 17 U.S.C. 408, and will not satisfy the mandatory deposit requirement under 17 U.S.C. 407.

(4) *Exceptional cases.* In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (f)(2) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

* * * * *

(n) *The scope of a group registration.* When the Office issues a group registration under paragraphs (d), (e), or (f) of this section, the registration covers each issue in the group

and each issue is registered as a separate work or a separate collective work (as the case may be). * * *

* * * * *

§ 202.6 [Amended]

7. In § 202.6(e)(1) remove “§ 202.3(b)(6) through (10) or”; and remove “SE.” and add “SE” in its place.

8. Amend § 202.19 by adding paragraph (d)(2)(xi) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(d) * * *

(2) * * *

(xi) In the case of serials (as defined in § 202.3(b)(1)(v), but excluding newspapers) published in the United States in a physical format, or in both a physical and an electronic format, the copyright owner or the owner of the exclusive right of publication must provide the Library of Congress with two complimentary subscriptions to the serial, unless the Copyright Acquisitions Division informs the owner that the serial is not needed for the Library’s collections. Subscription copies must be physically mailed to the Copyright Office, at the address for mandatory deposit copies specified in § 201.1(c) of this chapter, promptly after the publication of each issue, and the subscription(s) must be maintained on an ongoing basis. The owner may cancel the subscription(s) if the serial is no longer published by the owner, if the serial is no longer published in the United States in a physical format, or if the Copyright Acquisitions Division informs the owner that the serial is no longer needed for the Library’s collections. In addition, prior to commencing

the subscriptions, the owner must send a letter to the Copyright Acquisitions Division at the address specified in § 201.1(b) of this chapter confirming that the owner will provide the requested number of subscriptions for the Library of Congress. The letter must include the name of the publisher, the title of the serial, the International Standard Serial Number (“ISSN”) that has been assigned to the serial (if any), and the issue date and the numerical or chronological designations that appear on the first issue that will be provided under the subscriptions.

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§ 202.20 [Amended]

9. Amend § 202.20 by removing and reserving paragraph (c)(2)(xvii).

10. In Appendix B to Part 202, revise the last sentence of paragraph a. to read as follows:

Appendix B to Part 202—“Best Edition” of Published Copyrighted Works for the Collections of the Library of Congress

a. * * * (For works first published only in a country other than the United States, the law requires the deposit of the work as first published.)

* * * * *

Dated: November 5, 2018

Karyn A. Temple,
Acting Register of Copyrights

Approved by:

Carla D. Hayden,
Librarian of Congress

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